



National Milk Producers Federation

National Milk Producers Federation • 2101 Wilson Blvd., Arlington, VA 22201 • 703-243-6111 FAX 703-841-9328

Agri-Mark, Inc.

Arkansas Dairy Cooperative Association

Associated Milk Producers, Inc.

California Dairies, Inc.

Cass-Clay Creamery, Inc.

Continental Dairy Products, Inc.

Cooperative Milk Producers Assn.

Dairy Farmers of America, Inc.

Dairymen's Marketing Cooperative, Inc.

Dairylea Cooperative Inc.

Ellsworth Cooperative Creamery

Farmers Cooperative Creamery

First District Association

Foremost Farms USA

Just Jersey Cooperative, Inc.

Land O'Lakes, Inc.

Lone Star Milk Producers, Inc.

Manitowoc Milk Producers Coop.

MD & VA Milk Producers Cooperative Association, Inc.

Michigan Milk Producers Assn.

Mid-West Dairymen's Company

Niagara Milk Cooperative, Inc.

Northwest Dairy Association

Prairie Farms Dairy, Inc.

St. Albans Cooperative Creamery, Inc.

Scioto County Co-op Milk Producers' Assn.

Select Milk Producers, Inc.

Southeast Milk, Inc.

Swiss Valley Farms, Co.

Tillamook County Creamery Assn.

United Dairymen of Arizona

Upstate Farms Cooperative Inc.

Zia Milk Producers

April 8, 2008

Thomas Dowd, Administrator
Office of Policy Development and Research,
Employment and Training Administration,
U.S. Department of Labor
200 Constitution Avenue, NW., Room N-5641,
Washington, DC 20210

RE: Regulatory Information No. 1205-AB55

Dear Administrator Dowd,

I am Jerry Kozak, President and Chief Executive Officer of the National Milk Producers Federation (NMPF). I submit this statement as a public comment to the proposed rule changes to the H-2A agricultural worker visa category published in the Federal Register on February 13, 2008.

The National Milk Producers Federation, based in Arlington, VA, develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. Our industry is one of the largest and most robust of the US agricultural sector. Nearly 60,000 commercial dairy farmers produced 185 billion pounds of milk in 2007, worth \$35.5 billion. This had an economy-wide impact of more than \$140 billion in economic activity and 1.2 million jobs.

Shortages of agricultural labor have increased over the years. The importance of immigrant workers in the United States is well-documented. The dairy industry could not operate at today's capacity let alone expand without immigrant workers. The dairy industry has consistently been seeking employees from local communities, but local workers are simply not available or not interested in working on the dairy farms. Independent estimates indicate that at least fifty percent of the U.S. dairy farm workforce is comprised of foreign born workers from Mexico and Central America. This trend has resulted despite U.S. dairy producers offering higher wages to employees in local communities.

The dairy industry is facing the same pressures to find legal workers as the rest of agriculture, with one glaring difference: we are unable to utilize the H-2A agricultural worker visa program. Our exclusion from this program brings heightened business and legal risks for our member farms, and we believe this is simply unfair. America's dairy farmers need and deserve the same access to legal foreign workers as other sectors of the agricultural industry.

As stated above, our member farms have been unable to participate in the H-2A visa program apparently due to the "*temporary or seasonal in nature*" employment requirement. This requirement has been defined as employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one (1) year when an employer can show that the need for the foreign workers(s) is truly temporary. In the context of year-round dairy production, this requirement has excluded the dairy industry from participation in the H-2A program.

NMPF strongly believes that this exclusion is a disservice to our industry and should be rectified via the Department of Labor and DHS rulemaking process. Several other agricultural workers enjoy specifically delineated access to the H-2A program and we seek the same treatment for dairy workers.

NMPF hereby requests that the Department of Labor formulate "special procedures" for dairy workers. These "special procedures" should not be any different than those offered to other agricultural sectors eligible to participate in the H-2A in particular sheepherding.

In fact, we believe the provision for sheepherders, found at 20 CFR § 655.93 has special relevance to the current dairy situation. These "special procedures" relieve the sheepherding industry from having to make a showing of "temporary or seasonal" employment. It is important to note that there has been no special legislation aimed at sheepherder visas since 1957 (see H.R. Rep. No. 67, 85th Cong., 1st Session (1957)). According to a DOL Field Memorandum (August 1, 2001), Congress permitted the special legislation to expire (in 1957); no further special sheepherder legislation was enacted and a labor certification program for temporary foreign sheepherders was implemented consistent with the H-2 program administered by INS (now CIS) and DOL. "This procedure has been followed since that time irrespective of the fact that most sheepherding jobs are neither temporary nor seasonal in nature." (DOL Field Memorandum (August 1, 2001)).

Furthermore, we believe that the H-2A program should be made more user-friendly by incorporating some aspects of more successful visa programs, such as the H-1B program.

1. Duration

The H-2A visa for dairy workers should last at least 3 years, rather than one, allowing for a well-trained and stable workforce, and to reduce the burden and cost to farmers. Farmers have been deterred from using the H-2A program due to the need to "start over" with new workers each year. This is particularly

problematic for an industry such as the dairy section, which relies on skilled and trained workers. By making the labor certification and the visa for 3 years, rather than 1 year, DOL could adjust the value of the visa to promote utilization of the system.

2. Length of Requirement to Stay Outside the United States

H-2A dairy workers shall be allowed to apply again for admission under the H-2A program after remaining outside the United States for a continuous period of 3 months.

3. Employment Authorization Upon Extension of Stay

The extension of stay program allowing 30 days for an approved H-2A to find second employment is very advantageous over the 10 day requirement that is currently in place. Small producers and others may be able to utilize this effort and allow an H-2A worker to freely transfer to another employer after the contract is complete with the first dairy employer. NMPF is pleased that this rule change has been put forth as it would allow dairy producers who have been certified to recruit skilled H-2A workers to utilize workers who may already be in the country in an expedited manner.

4. SWA involvement

We applaud the new rules for reducing the role of the State Workforce Agencies in the process. We believe that most of the delay in processing H-2A visas in a timely manner has occurred at the State Workforce Agency (SWA) level. While labor certification applications are no longer to be filed directly with the SWAs (a very positive development), we believe the opportunity for delay still exists in their involvement at the recruitment stage (see 29 CFR 655.100). The SWA's have been notoriously slow at determining labor certification decisions where workers do respond to recruitment. We believe that the SWA's should be taken out of the recruitment process altogether, and only be involved in the inspection of worker housing and workplace conditions after approval of the labor certification and visa and the commencement of work. A federal online clearing house for responding workers should be developed by DOL in order to take the SWAs out of the recruitment stage.

5. Electronic Filing

NMPF supports electronic filing. However, many small farms are not yet equipped to process complex applications electronically. On-line training should be provided, and a mail-in, paper-based option should be available parallel to the electronic process.

6. Eliminating the 50% Rule

NMPF supports eliminating the 50% rule. The 50% rule requires the employer to hire any qualified and eligible U.S. worker who applies for a job until fifty percent (50%) of the period of the work contract has elapsed. This

requirement would deter dairy farmers from utilizing this program. It makes it extremely difficult to calculate labor costs and it can cause disruption and displacement of workers already hired. Any mandatory mid-season hiring requirements should be eliminated.

7. Housing Voucher

NMPF supports the housing voucher. We believe that in order for farms to be encouraged to participate in this program, a degree of flexibility must be worked into the regulations. The requirement to provide free housing to H-2A workers is a substantial hurdle to many of our smaller members, who lack the property and resources to provide such housing on-site. Furthermore, the SWA housing inspection backlogs are a major impediment to timely and efficient processing of the applications. As the voucher substantially takes the SWAs out of the housing process, we see this as a major improvement in processing and usability.

8. Minimum AEWR

NMPF supports the \$7.25 minimum AEWR. We believe American farms pay fair wages to our workers, and we do not object to a minimum AEWR of \$7.25. We do not seek to drive down the wages of our American workers. To the contrary, we hope to attract more authorized workers through fair wages and good working conditions.

9. Attestation-Based Process

The proposal to switch to an attestation-based process for H-2A is a welcomed change. NMPF supports this proposal. This would bring H-2A more in line with the attestation process for H-1B and H-2B visa applications. The proposal calls for an increase in the length of time that an employer must positively recruit workers. While the increase may be manageable one must ensure that the increase in the recruitment time eliminates the need for the 50% rule. Larger farms may be able to handle the increased costs for the longer advertising period. However, smaller and medium farms will have difficulty incurring this additional cost burden, especially when the smaller farms may only need a few workers.

10. DOL Rule proposes to change the definitions of agriculture (see(1)(i)(v) and (vi)) of the DOL rule.

This new definition proposal tends to consider packaging facilities to be part of the updated definition. Expanding the definition of agriculture to include other related agriculture related fields for the use of H2-A workers is important. If this program doesn't help all agricultural workers including dairy producers and if it doesn't operate in such a way that becomes effective it will not help US agriculture and therefore US consumers.

America's dairy industry is at the forefront of the immigration debate in Washington DC and at home. It is necessary for the continued success of our industry that we have a reliable workforce.

I express my appreciation to the President for his efforts to streamline provisions to the H2-A program to ensure that agriculture maintains a stable and legal workforce. I pledge to continue to support the President and his efforts to comprehensively reform the nation's immigration laws. The President's plan for comprehensive reform would have:

- 1.) Strengthened the American economy while securing America's borders.
- 2.) Provided employers the tools necessary to verify immigration status for those they wish to hire.
- 3.) Created a temporary worker program that protects American workers and recognizes the unique needs of the dairy industry.

NMPF appreciates the opportunity to provide these comments and strongly urges the adoption of the provisions outlined above. Such changes will greatly enhance the ability of America's dairy industry to stay strong and vibrant. Without these needed improvements, the current workforce shortages will become more severe with the potential for decreases in production, higher costs to consumers, and a greater dependence on imports, further jeopardizing this nation's food security.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Kozak". The signature is written in dark ink and is positioned below the word "Sincerely,".

Jerry Kozak
President and Chief Executive Officer
National Milk Producers Federation